

IN THE MATTER OF

**Everett**

VS

**Cobb County, Georgia, et al.**

TRANSCRIPT OF DEPOSITION OF

**Brian S. Batterton**

On November 14, 2018

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*Reported by Natalie E. Sandi*  
*Certified Court Reporter*

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

AMY EVERETT and TJELVAR EVERETT,  
Plaintiffs,

vs. CASE NO. 1:17-cv-3392-TWT

COBB COUNTY, GEORGIA,

OFFICER JAMES HOPKINS,  
individually and in his official  
capacity; and,

LANI MESHELLA MILLER,  
Defendants.

- - -

Deposition of  
BRIAN S. BATTERTON,

Taken by John P. Batson,

Before Natalie E. Sandi,  
Certified Court Reporter,

At the  
Cobb County Attorney's Office,  
Marietta, Georgia,

On Wednesday, November 14, 2018,  
Beginning at 11:08 a.m. & ending at 12:49 p.m.

VOLUME OF TESTIMONY  
(EXHIBITS CONTAINED IN SEPARATE VOLUME)

1 APPEARANCES OF COUNSEL

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15 ALSO PRESENT:

16 Amy Everett  
17 James Hopkins  
18 Laura Murphree  
19  
20  
21  
22  
23  
24  
25

## 1 INDEX TO PROCEEDINGS

## 2 EXAMINATION INDEX

3 BRIAN S. BATTERTON

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8 EXHIBIT INDEX

## 9 Plaintiffs' Exhibits

10 8 PowerPoint presentation: 18  
11 Legal Update-2015 Annual Training  
(JPB000826 - 833)12 9 Email to All Personnel from 7  
13 Captain BS Batterton, 07-01-2015,  
14 Re: 2015 Legislation

## 15 Defendants' Exhibit

16 6 Criminal warrant issued by the 27  
17 Magistrate Court of Cobb County  
(JPB0066)18 (REPORTER'S NOTE: Defendants' Exhibit 6 as  
19 listed above was marked in a previous deposition  
20 and is attached for reference. Defendants'  
21 Exhibit was provided to the court reporter at a  
22 later time and not at the conclusion of the  
23 deposition. The court reporter has attached the  
24 exhibit in the form in which it was provided per  
25 agreement of Counsel.)

(End of Index)

1 November 14, 2018

2 11:08 a.m.

3 (Whereupon the reporter provided a written  
4 disclosure to all counsel pursuant to  
5 Article 8.B. of the Rules and Regulations  
6 of the Board of Court Reporting.)

7 MR. BATSON: This is the deposition  
8 of -- is it Major Batterton?

9 THE WITNESS: It is.

10 MR. BATSON: Okay. And this  
11 deposition is taken pursuant to at least  
12 notice -- I don't remember if I sent a subpoena  
13 or not -- did send a subpoena -- and all  
14 objections except as to form of question are  
15 reserved until such time as this deposition is  
16 tendered in this or any other action. Any other  
17 conditions?

18 MR. SNELLING: That is acceptable,  
19 and we will read and sign.

20 MR. BATSON: All right. Could you  
21 state your name for the record, please?

22 THE WITNESS: My name is Brian  
23 Batterton.

24 MR. BATSON: All right. And what is  
25 your current rank?

1 Oh, we've got to swear him in.

2 Thanks.

3 BRIAN S. BATTERTON,

4 being first duly sworn, was examined and

5 testified as follows:

6 EXAMINATION

7 BY MR. BATSON:

8 Q Is that still your name?

9 A It's still my name. Brian Batterton.

10 Q Brian Batterton. All right. So  
11 what's your rank?

12 A Major.

13 Q All right. And how long have you  
14 been with Cobb County?

15 A About 24 years, give or take a  
16 little, few months.

17 Q All right. Did you ever work for any  
18 other law enforcement agency?

19 A I worked for Georgia State University  
20 for about less than a year.

21 Q Okay. And when did you assume a  
22 training role?

23 A I worked at training from, let's see,  
24 mid-2000 -- or maybe it was 2001, yeah, to 2003  
25 as a corporal. And I was over police recruits at

1 the time. I had a sergeant over me, but I was  
2 like their main supervisor. And then I went  
3 and -- I've worked at training like as an adjunct  
4 instructor every year since then, since '01, but  
5 the assignments were '01 to '03 and 2012 to 2016.  
6 And there then I was the academy director.

7 Q All right. And is that the Cobb  
8 County Academy?

9 A Correct. Cobb County Department of  
10 Public Safety Training Center. And it's the  
11 police academy side, not the fire academy side.

12 Q Okay. And what was your rank during  
13 2012 to 2016?

14 A Captain.

15 Q Okay. And we had asked you to appear  
16 as a 30(b)(6) witness. Were you made aware of  
17 that was why you would be attending this?

18 A Yes.

19 Q Okay. And in that manner, did you  
20 review the topics that we listed in the notice?

21 A I did.

22 Q Okay. So you feel prepared to  
23 address any of -- all those?

24 A I'll address whatever questions you  
25 ask me --

1 Q Okay.

2 A -- to the best of my ability.

3 Q All right. Basically, I do have to  
4 kind of clear that up. In other words, you  
5 addressed yourself and thought about each of  
6 these --

7 A Yes.

8 Q -- topics that we listed? Okay. And  
9 then I have to finish asking my question, and  
10 I'll try and let you finish answering the  
11 question. Okay.

12 (Whereupon a document was identified as  
13 Plaintiffs' Exhibit 9.)

14 Q First thing we'll cover is Exhibit 9.  
15 Could you tell us what Exhibit 9 is?

16 A This is a 2015 legislative update  
17 that I sent out on July 1, 2015. It was an email  
18 that was sent to the entire police department,  
19 and it lists various House bills and Senate bills  
20 that have potential impact for police officers.  
21 And then it includes -- it's a summary of them,  
22 and then it includes a link to the actual  
23 statute.

24 And the summary was pulled off of --  
25 cut and paste right out of the legislative



1 website.

2 Q Are you the one who composed all the  
3 updates that relate to law enforcement, or is  
4 there some central post office that sends these  
5 out, sends out what the updates are?

6 A There's a variety of folks that  
7 send -- there's some private companies that email  
8 updates. And if you subscribe, then you get that  
9 update. And sometimes we'll email that to the  
10 whole police department. So I compose some of  
11 them, not all of them. There's a variety of  
12 places they come from.

13 Q So I notice on Exhibit 9, it does  
14 say, July 1, 2015. Do you believe that's when  
15 you sent this email out?

16 A I do.

17 Q Okay. Is there any way to check  
18 whether each officer acknowledges that they  
19 received it?

20 A There is not.

21 Q Okay.

22 A Could I add something?

23 Q Sure.

24 A Okay. The reason I included this one  
25 is because it included the crime of -- the law

1 change related to harassing phone calls and  
2 changed it to harassing communication. That's  
3 Senate Bill 72. It's on the second page near the  
4 top.

5 Q All right. And do you recall what  
6 the difference was between -- or before July 2015  
7 and then after July 2015, what was the difference  
8 about the electronic kind of communications?

9 A The format of the law changed, the  
10 way they outlined the statute, and they include  
11 electronic communications and any other form of  
12 communications in addition to telephone. It used  
13 to just be telephone.

14 Q Okay. Now, you're going right to our  
15 30(b)(6) notice here. The first topic I was  
16 interested in here is the -- first, I want to get  
17 into the process of how the training would have  
18 occurred for a new law coming out July 2015 and  
19 when Mr. Hopkins would have gotten his cycle  
20 through to get more detail about that.

21 A Well, some statutes that are  
22 significant changes and officers encounter a lot  
23 will actually have separate training sessions for  
24 them. So when Georgia changed the gun law  
25 several years ago, we would -- I did a class. It

1 was like an hour or two -- I think a two-hour  
2 legal update on that specific statute. And  
3 everybody in the department over the period of a  
4 week came and attended, physically, in person,  
5 the class.

6 For something like this, where these  
7 statutes were kind of changed in a minor way, and  
8 particularly the harassing communication one,  
9 there wasn't really a need to do that because the  
10 substance of the law did not change. The only  
11 thing that's changed was it became a crime to  
12 commit harassing communications by more methods.

13 So, for example, before, it was just  
14 telephone, and now email was included as well as  
15 other forms of electronic communications, so  
16 that's pretty self-explanatory. So that's not  
17 one where we're going to physically pull people  
18 in for.

19 Q Okay. So basically, you'd be saying  
20 that there was no separate class right away to  
21 train on the change in the harassing  
22 communications statute?

23 A No, sir. It was obvious.

24 Q Okay. That process. All right. Did  
25 you-all get any information about -- or had you

1 had any prior training about the distinction  
2 between phone calls and emails as to whether  
3 they -- whether they're -- what's harassing about  
4 a phone call versus what is harassing about an  
5 email?

6 A I'm not sure I'm understanding the  
7 question.

8 Q All right. Were you aware of Georgia  
9 law existing at least as of 2010 that what was  
10 harassing about a phone call was the ringing of  
11 the phone within the house and of the tying up of  
12 the line within that house? Were you aware of  
13 that?

14 A That's part of it, but what can also  
15 be is the actual speech. I'm also an attorney in  
16 Georgia, and I'm aware of some other case laws  
17 that indicate that a person who calls -- I think  
18 it was Moss versus State, Georgia Court of  
19 Appeals case, where a person called a DA's  
20 investigator repeatedly and used profanity at the  
21 investigator after being told to stop and over  
22 getting charges dismissed.

23 And that person was charged and  
24 convicted of harassing communications, and that  
25 was within the statute.

1 Q Okay. Just to clarify, you know, the  
2 person that's 30(b)(6), you didn't have any role  
3 in reviewing the actual conduct of Mr. Hopkins in  
4 this case, did you?

5 A No.

6 Q Okay. All right.

7 A After the fact -- I mean, I looked at  
8 the report and the incident after the fact.

9 Q Okay. Well, I can't ask you about  
10 that, so.

11 Were you aware of any changes in the  
12 law about venue because of the email issue or  
13 even phones, I guess?

14 A The -- prior to the law change, the  
15 general venue statute, jurisdiction statutes,  
16 were applied to that, and there was some case law  
17 on that too. I don't recall the case name, but  
18 in 2015, they added a subsection to control venue  
19 on harassing communications which pretty much  
20 codified it specific to that, which is anywhere  
21 that the communication was sent from or was  
22 received.

23 So it didn't actually change. It  
24 just included it as a subsection within that Code  
25 section.

1           Q       So the training prior to July 1,  
2       2015, would have been that a phone call made from  
3       outside the state, as long as it harasses  
4       somebody inside the state, would be a harassing  
5       phone call and could generate probable cause even  
6       though the caller was in some foreign state?

7           A       That was the state of the law then,  
8       yes, sir.

9           Q       Okay. And then when they did the  
10      change in July 2015, they just added emails, and  
11      the same logic stuck with the statute. Is that  
12      your view of it?

13          A       Well, they added email and other  
14      forms of communication, and they actually took  
15      that venue and stuck it within the Code section  
16      as a subsection in the 16-11-39.1.

17          Q       Okay. And no separate training was  
18      done about the venue issue?

19          A       No, because venue didn't change. It  
20      was just added to that Code section.

21          Q       Okay. All right. So did you ever do  
22      any training that there might be some question  
23      about the jurisdictional reach of someone who  
24      wasn't in Georgia at the time that they sent an  
25      email?

1           A           The Code section says that there's  
2           not a jurisdictional problem, that if harassing  
3           communications takes place that venue is where  
4           they send it from or where it was received. So  
5           there is no venue issue in this incident. And it  
6           did not change, so, no, we did not do any  
7           specific new training.

8           Q           Okay. And the difference between an  
9           email and a phone message is, email, you have to  
10          open it up to read it; right? And it doesn't  
11          really harass you by a ringing or anything, does  
12          it?

13          A           Not by a ring -- I mean, there's, I  
14          guess, a tone if you have a tone, or it could be  
15          on silent, or it could be a vibration, you know,  
16          all the different ways you can be notified.

17          Q           And you can set up your emails to not  
18          have a tone when they come in by your own  
19          settings. You set your computer as to what kind  
20          of notice you get about emails; right?

21          A           Generally, your personal computer, I  
22          guess, and I don't know -- I wouldn't even know  
23          how to do it on my County computer.

24          Q           You would have an IT department who  
25          could do that?

1           A       I would.

2           Q       Yeah. Do you still -- you last  
3       trained -- you left training in 2016; is that  
4       correct?

5           A       Yes, sir.

6           Q       Since then, have you -- before that,  
7       did you do any training on the law with respect  
8       to whether an email -- whether you can arrest for  
9       an email -- in Georgia for an email that's sent  
10      outside of -- from outside of Georgia based on  
11      federal law?

12          A       We don't enforce federal law.

13          Q       All right. Well, you have to follow  
14      the federal constitution?

15          A       Correct.

16          Q       All right. Which would limit what  
17      kind of state law you could impose or enforce;  
18      correct?

19          A       State statutes can be later held to  
20      be unconstitutional, and we certainly have to  
21      comply with the Fourth Amendment with search and  
22      seizure.

23          Q       Okay. Have you, since July of 2015,  
24      taught anything about pulling back on a belief  
25      that Georgia statutes have venue over someone who



1 sends an email that might be unlawful from, say,  
2 Alabama?

3 A No. That would be up to the courts  
4 to decide. If Georgia came up with some -- if  
5 Georgia had some case law from the Georgia Court  
6 of Appeals or the Supreme Court of Georgia or  
7 there was some federal case law on that, then  
8 that is something that we would put out as kind  
9 of a change.

10 But I'm aware of no case law on that,  
11 and I do not believe that to be to the state of  
12 the law. I believe the state of the law is that  
13 it's appropriate -- the venue is appropriate  
14 where the email is received as well as where it  
15 was sent from. So it's an either/or. You can do  
16 it either place.

17 Q All right. Let's talk about what is  
18 or is not protected. Because you are aware that  
19 the 16-11-39.1 says that that Code section shall  
20 not apply to constitutionally protected speech;  
21 correct?

22 A Correct.

23 Q So before August of 2015, what  
24 training was given as to the fact and law that  
25 obscenity is not protected, but things like

1 profanity, vulgarity, rudeness is protected  
2 speech? Did you train on that?

3 A Again, you said -- just to make sure  
4 I'm clear, did you say profanity is not protected  
5 and vulgarity is protected?

6 Q No. Profanity and vulgarity are  
7 protected, but obscenity is not.

8 A I didn't train on it in those  
9 specific terms, but training that related to what  
10 is protected speech -- primarily what we would  
11 focus on is looking at what speech, when directed  
12 at a police officer, was a violation of, say, a  
13 disorderly conduct statute. And that's where the  
14 First Amendment interplayed as well as some  
15 issues on videotaping the police. That's also a  
16 First Amendment question.

17 So the main focus of training at the  
18 training center in the time period that you're  
19 speaking of was related to speech directed at  
20 police officers.

21 Q Okay.

22 A And it did encompass things such as,  
23 you know, isolated profanity is not the same as  
24 fighting words and what constitutes fighting  
25 words. We would discuss that.

1           (Whereupon a document was identified as  
2           Plaintiff's Exhibit 8.)

3           Q       All right. Let me show you what we  
4           have marked as Plaintiffs' Exhibit 8. And if you  
5           would, identify that if you can.

6           A       All right. This is a 2015 annual  
7           training legal update PowerPoint.

8           Q       Okay. All right. And the officers  
9           would have been taught, based on this, that a  
10          citizen could tell an officer he's, you know, a  
11          fucker, and that wouldn't be basis to arrest him  
12          for disorderly conduct; right?

13          A       Correct.

14          Q       And that what has to happen is there  
15          has to be some physical threatening conduct  
16          associated with or near about the time of the  
17          speech, and it's the conduct that generates the  
18          arrest for the disorderly conduct; right?

19          A       Well, or it's the totality of the  
20          circumstances where the speech is being uttered.  
21          So there could be -- I think your statement's a  
22          little bit too narrow. I can't come up with an  
23          example off the top of my head. But you just  
24          have to look at the totality of the  
25          circumstances.

1           So some words said face-to-face, you  
2     to me right here in this room, that included  
3     profanity or vulgarity may not amount to fighting  
4     words directed at a police officer but may amount  
5     to fighting words directed at a civilian.

6           But then those same words directed at  
7     me as a police officer in a parking lot of an  
8     apartment complex where there's an angry crowd of  
9     a hundred people crowding around us, then those  
10    exact same words may amount to fighting words  
11    because the totality of the circumstances can end  
12    up being in combination with the words what  
13    creates that threat to the officer.

14          Q       Okay. In the totality of  
15    circumstances with respect to an email, there's  
16    no crowd present. Nobody's in danger of getting  
17    hurt just when you open up an email; right?

18          A       Correct.

19          Q       And did you have training in before  
20    August of 2015 that speech or videos about child  
21    pornography would be a basis to arrest?

22          A       We did not talk about the child  
23    pornography arrest situations like that. Now,  
24    there could have been various Internet-based  
25    crime classes that were taught at the training

1 center that dealt with the sending of child  
2 pornography, but that was not something that I  
3 trained.

4           You know, the thing is, though, on  
5 the harassing communications statute, the  
6 language doesn't have to specifically constitute  
7 a threat to constitute harassing communications.  
8 So the language used repeatedly in a short amount  
9 of time, the language sent to various people  
10 where a victim is also carbon copied on that  
11 email, it's the whole totality of the  
12 circumstances. Because we're not looking at a  
13 disorderly conduct charge reference, the  
14 harassing communications statute. It's a whole  
15 separate thing.

16           The theme of that statute is an email  
17 or other type of communication that's sent to  
18 harass, molest, or threaten. So there's an "or"  
19 in there. So language that is harassing or  
20 repeated that is intended to harass can amount to  
21 a violation of the harassing communication  
22 statute even where no threat was issued.

23           Q       Are you aware that the federal law  
24 might be that harassing speech is still protected  
25 speech?

1           A           It's not always protected speech.

2           Q           Can you tell us when it isn't,  
3 relative to email?

4           A           When it is not?

5           Q           Yeah.

6           A           Well, what I can tell you is that the  
7 language of the harassing communication statute  
8 where it pertains to the communication where it  
9 says to harass, molest, or threaten did not  
10 change from the harassing communication or the  
11 harassing phone calls statute.

12                    So with respect to what would  
13 constitute a violation of harassing  
14 communications and not pose a First Amendment  
15 issue as per the Georgia Court of Appeals case  
16 law prior to that law change that encompasses  
17 emails would still be relevant, or persuasive at  
18 the very least.

19                    And the case that I told you about  
20 where there was profanity-laced phone calls  
21 repeatedly to an ADA -- or an ADA investigator,  
22 that would still be relevant in the context of  
23 email. It's just the method of communication has  
24 changed.

25                    So if there were case law contrary to

1 that, then I would -- I would be able to more  
2 clearly go with what you're saying, but I'm not  
3 aware of any, and not all speech is protected.

4 Q Do you think you were just talking  
5 about the Moss case?

6 A I was.

7 Q Okay. Well, how do you teach -- or  
8 before August of 2015, how did you teach what  
9 speech was harassing and unprotected versus  
10 harassing speech that is protected or the  
11 circumstances that make something illegal?

12 A It would be the totality of the  
13 circumstances. And it's one of those things like  
14 you were talking about obscenity. What the  
15 Supreme Court said about some obscenity is it may  
16 be hard to define, but you know it when you see  
17 it, or you know it when you hear it, or you know  
18 it when you read it.

19 I mean, it's an application of common  
20 sense and the whole totality of the circumstances  
21 as to would a reasonable person feel harassed by  
22 that communication, or would a reasonable person  
23 be expected to let, you know, that communication  
24 roll off their shoulders.

25 There's -- and what's expected of

1 police is a higher standard. We're expected to  
2 tolerate more when email or communication is  
3 directed at us than your average civilian.

4 Q Okay. Do you recall whether Cobb  
5 County had, you know, prior to August of 2015,  
6 had any training about speech between private  
7 parties about what can be said as long as it's  
8 pure speech either in a letter or an email?

9 A Each Code section is discussed in  
10 mandate, in basic mandate, in the criminal law  
11 class. So criminal law is -- I guess some  
12 academies, it's a two-day class. I think in our  
13 academy, it's a three-day class. I'm not sure  
14 when Detective Hopkins went to mandate or where  
15 he went to mandate, whether he got the two-day or  
16 the three-day, but it's still each statute is  
17 discussed and examples are provided based on the  
18 instructor's experience and how the instructor  
19 explains it.

20 I was not his basic mandate  
21 instructor, I don't think. So I'm not sure how  
22 it was explained to him. But that would be  
23 covered in basic mandate.

24 Q Okay. Between 2015 and 2016 when you  
25 left the training aspect of the department, do



1 you recall any training that was put out by you  
2 guys to the Cobb County people about what kind of  
3 speech private persons can have between  
4 themselves either in emails or letters that is or  
5 is not harassing or that might trigger this  
6 statute? Any special training like that?

7 A I don't -- I can't think of any, no,  
8 on emails?

9 Q Okay. All right. And probably none,  
10 obviously, on letters?

11 A Correct.

12 Q Do you recall any training that,  
13 between 2015 and the time that you left, that --  
14 about defamation and where defamation fits within  
15 the harassing communications statute?

16 A I can't recall any --

17 Q All right.

18 A -- in that time frame.

19 Q So do you train about what is  
20 perjurious speech or false speech?

21 A What is false speech?

22 Q Yeah, or a false report? Perjury is  
23 not protected speech. You would agree with that?

24 A Correct.

25 Q One of the questions I asked about

1 was training your officers about what perjury is.

2 A We, in basic mandate, we teach them  
3 about the fact that if you make a false statement  
4 in conjunction with obtaining a warrant, that can  
5 constitute a Fourth Amendment violation, a Franks  
6 violation. And we talk about what a false  
7 statement would be considered in that, and it  
8 would be one that -- we train them that it would  
9 be one that would affect probable cause.

10 So if a statement is material, it  
11 affects probable cause. If it affects probable  
12 cause, you have to disclose it to the magistrate.  
13 So that's the context of perjured testimony  
14 that -- of training that's given to officers.

15 Now, the code sections that deal with  
16 perjury and false statements, they're taught that  
17 information in criminal law. As for perjury,  
18 lying under oath in a court proceeding, I mean,  
19 that is a very commonsense Code section. You  
20 don't -- it doesn't take a whole lot of training  
21 to tell somebody, don't lie in court, and you  
22 don't ever have to worry about perjury. False  
23 statements, same thing. False swearing, same  
24 thing.

25 Q Now, do you teach the officers that

1 like purported victim comes in and the victim's  
2 story to the officer, even though they didn't  
3 sign anything saying, I swear this is true, is  
4 that something -- is that the kind of speech that  
5 can lead to a perjury charge or a false statement  
6 charge? Do you train the officers on that?

7 A They get trained that if a person  
8 comes in and lies to the police officer in a  
9 matter of making a report, it can be a false  
10 report of a crime. And if they lie to an officer  
11 in the course of an investigation, there's a  
12 higher charge of false statements --

13 Q Okay.

14 A -- which is a felony and that,  
15 depending on what they're lying about, there's a  
16 potential for that to be a statute that's  
17 violated by the person speaking to the officer.  
18 And that could be a witness. It could be the  
19 victim. It could be the suspect, if they've  
20 elected to speak to the police.

21 Q What was the misdemeanor charge you  
22 mentioned?

23 A False report of the crime.

24 Q False report. All right.

25 A That gets applied to people that

1 drive drunk, crash their car, run home, and  
2 report it stolen, that kind of thing. That's a  
3 typical scenario for false report of a crime.

4 Q All right. You sort of covered this,  
5 but what would Hopkins have been trained about  
6 what should or should not be stated in a warrant  
7 application?

8 A He would have been trained that he  
9 needs to state the facts that amount to probable  
10 cause. The other thing, though, about the  
11 warrant application is the warrant application is  
12 based on written and sworn verbal testimony to a  
13 magistrate judge.

14 So when you take out a warrant using  
15 the computer system that we have to take out a  
16 warrant, when you put in the statute, it like  
17 gives you some basic language. And then you type  
18 in additional facts into that language to make it  
19 specific to your incident.

20 And then beyond that, you also  
21 provide sworn testimony to the magistrate judge  
22 to complete your basis for probable cause.

23 (Whereupon a document previously marked as  
24 Defendants' Exhibit 6 was identified.)

25 Q All right. Just to clear that up

1 about that computer system, I'm going to show you  
2 what we've marked in a previous deposition as  
3 Defendants' Exhibit 6, and I've penciled it real  
4 lightly so I can erase it.

5 And can you tell from that document  
6 whether that was one that went through the  
7 process you discussed about a computer-generated  
8 beginning in reference to the statute or  
9 something and then it gets filled in? Or can you  
10 tell from maybe Hopkins' signature that that was  
11 electronic?

12 A I'm reading it now.

13 Q Okay. That's what I want you to do.  
14 Let me know. You don't have to kill yourself on  
15 it because I'll be able to ask Mr. Hopkins at  
16 lunch or after lunch, so.

17 A Yes, sir. This looks like it was  
18 done on the EWI system, the electronic warrant  
19 system.

20 Q Okay. All right. Now, what would be  
21 the process? You fill out your electronic  
22 warrant, send paperwork -- well, other paperwork  
23 along with the warrant over to the magistrate's  
24 office, get it -- magistrate says, come over here  
25 at 10:00 or call you, or how's that all work?

1           A           It's been quite a while since I've  
2           had to take a warrant, but -- so I'll speak in  
3           general terms, and maybe you can clear up  
4           specifics with Detective Hopkins.

5           Q           If you can --

6           A           But in general terms --

7           Q           Let me interrupt you. If you can,  
8           try and think about it in terms of August 2015.

9           A           Right. It's been longer than that  
10          since I've had to take a warrant.

11          Q           Okay. All right.

12          A           But you would -- you log in. You go  
13          to open up a warrant affidavit. You fill in the  
14          charge like from a dropdown box of what the  
15          violation is, and it gives you some initial  
16          language. And you type in the date -- you know,  
17          between dates and times and the locations. And  
18          then you type in some specifics of what the crime  
19          was. And then you call the judge, and you let  
20          him know that you have one pending.

21                   And if he's available right then,  
22          he'll talk to you right then. He'll pull it up.  
23          You'll be on face -- webcam, face-to-face with  
24          the judge on a webcam. And then the judge will  
25          say, tell me what you've got. And then you

1 verbally explain it to him. He reads the  
2 affidavit.

3 And I guess the point -- one of the  
4 points of that system was it kind of puts it into  
5 a format that's sufficient as a warrant. So they  
6 don't have to do much, if any, editing to the  
7 actual warrant. They can just import it right  
8 into the warrant.

9 And then you sign it on a pad --  
10 which I believe was a pad, or there's some kind  
11 of way to electronically sign the thing. And the  
12 judge signs it, and then you can print the  
13 warrant.

14 Q All right. Now, if there had been  
15 exhibits like the emails in this case, how would  
16 the magistrate have been able to see those  
17 through this process?

18 A You know, I mean, however the judge  
19 wanted to see them. Things could be scanned and  
20 emailed if the judge wanted to see them, or it's  
21 possible that simply telling the judge or reading  
22 some of the substance to the judge could have  
23 been sufficient for the judge. It's whatever the  
24 judge wants to hear evidentiary-wise to establish  
25 probable cause.

1 Q And do you know if those tapes are  
2 saved or that interview with the judge, testimony  
3 to the judge, is saved?

4 A I don't think so, but I'm not  
5 positive. Years ago, it wasn't. But I don't  
6 know now.

7 Q Okay. So obviously you don't use  
8 past tapes of that process as a training tool, or  
9 you haven't in the past?

10 A No, sir. There are no tapes of that.

11 Q Okay. All right. Can you tell me as  
12 of August 2015 what training was done by the  
13 department about cease and desist letters done by  
14 officers?

15 A We did no training on cease and  
16 desist letters. But the -- for example, the  
17 letter that was sent in this case was much more  
18 akin to a courtesy warning than anything because,  
19 you know, from a review of the case file, the  
20 probable cause was established prior to the  
21 sending of that letter. The email that was sent  
22 right after the letter was sent is minimal in  
23 comparison to what took place prior.

24 So the conduct -- I mean, it states  
25 it right here in the warrant that you handed me,



1 the Plaintiffs' Exhibit 13.

2 (Whereupon the witness refers to  
3 Defendants' Exhibit 6.)

4 A It states facts from January 2015 and  
5 August 2015, so -- and references phrases,  
6 derogatory names that were used through that time  
7 period.

8 So the probable cause that was  
9 established wasn't because of violation of that  
10 letter. That letter was a courtesy warning.

11 Q So any emails that were received  
12 before July 1 wouldn't have been covered; right?

13 A Emails received before the law  
14 changed is what you're saying?

15 Q Yeah, yeah.

16 A Correct, by that statute. However,  
17 they could be viewed in the totality of the  
18 circumstances to form -- frame the totality of  
19 the circumstances. And they just wouldn't  
20 constitute a violation of that particular  
21 statute.

22 But from what I saw, the vast  
23 majority of the harassing communication occurred  
24 from August 24 to August 26, particularly  
25 August 24 and August 26, the majority of it being

1 August 24, so -- which was after the statute  
2 change.

3 Q All right. And so tell me what  
4 training is done on cease and desist letters and  
5 then what training is done on what you're  
6 distinguishing -- courtesy warning? What word  
7 did you use?

8 A It was like a courtesy warning.

9 Q Okay. So tell me what training is  
10 done on those two things.

11 A There -- it's all part of an  
12 officer's discretionary authority. So training  
13 that's done is that officers are trained that  
14 they have some measure of discretion in how they  
15 handle various incidents. So there are --  
16 there's more than one right way to handle a  
17 situation.

18 Officers don't have to do it my way.  
19 They have to be reasonable. And as far as the  
20 law goes and as far as the Fourth Amendment goes  
21 and the First Amendment, officers need to be  
22 reasonable.

23 So within that reasonable behavior,  
24 there's a range. And that range can include  
25 giving somebody a warning, and it can include

1     arresting somebody. So he -- as far as how to  
2     write a cease and desist letter, we did no  
3     training. But officers are trained on the fact  
4     that they have some discretion in how they handle  
5     their workload, especially detectives.

6             And he started low, if you will, with  
7     a warning. Don't talk to her anymore. If you  
8     have any questions, contact me, meaning the  
9     detective. And then when there was additional  
10    contact, then the officer or the detective, it  
11    appears, went ahead and acted on probable cause  
12    that was already established based on conduct  
13    that had already occurred.

14            Q     What training do you give about the  
15    writing of cease and desist letters where the  
16    officer puts in a condition that all  
17    communication shall stop by a certain deadline?  
18    Do you give any training about that?

19            A     No.

20            Q     Okay. That would --

21            A     But, again, it just falls under  
22    officers' discretion.

23            Q     Okay. Do you give any training about  
24    making sure that the officer is clear about time  
25    zones when somebody's in a different time zone

1 and they're setting a conditional deadline?

2 A No, no. It looks like for that, I  
3 mean, I would imagine that common sense would  
4 dictate the time zone would be where the letter  
5 was mailed from.

6 But absent that, the courtesy letter  
7 wasn't required, so even if there was a  
8 misunderstanding on the courtesy letter as per  
9 time zones, the probable cause had already been  
10 established based on conduct that had already  
11 occurred, so --

12 Q All right. When you say --

13 A -- it really doesn't matter.

14 Q Okay. Did you notice in your review  
15 of the file whether there was any evidence at any  
16 point from January 1, 2015, to late August 2015  
17 that Ms. Miller had told Ms. Everett to stop?

18 A The file contained email, and there  
19 was no email that was sent back from the victim,  
20 from Ms. Miller, to Ms. Everett saying stop.  
21 That was not included.

22 There was, however, an email in -- I  
23 think it was August 24 where a phone number was  
24 emailed and said, if you want to talk about this,  
25 here's the number, or something like that.

1           And then there was another email, I  
2     believe that same date, that said something to  
3     the effect of, I want to see you cry. I'll come  
4     to your school. And then it said, poor --  
5     whatever her first name -- Lani doesn't want to  
6     be -- I guess she doesn't want to be contacted.  
7     And then it called her a name, a derogatory,  
8     profane name. And then there was additional  
9     email that was sent after that email.

10           So from that, a reasonable officer  
11    could infer that she didn't want to be contacted,  
12    meaning Ms. Miller didn't want to be contacted,  
13    yet the email flow continued.

14           Q       So is that all part of your training  
15    that you did this review, or you're testifying as  
16    an expert for the County?

17           MR. SNELLING: Object to the form.

18           A       Well, I'm looking at this from a  
19    training aspect because you're asking me what  
20    kind of training needs to be given. And as I  
21    look at this, it emphasizes to me that there are  
22    certain things that are common sense that don't  
23    require training.

24           So I'm pointing out things that a  
25    reasonable officer would look at and be able to

1 make some logical inferences from. And when you  
2 see those, it emphasizes the fact that we don't  
3 need -- I mean, we can't train on every single  
4 thing because there isn't enough time, nor is  
5 there enough creativity in a person to  
6 conceptualize every possible circumstance and  
7 manner of crime that could occur.

8           So my review would show me, of this,  
9 that training is sufficient in order to point an  
10 officer or a detective in the proper direction.  
11 And that's the context at which I'm testifying.

12           Q       Okay. And in that regard, did you  
13 find it material that in the beginning of the  
14 whole complaint from Ms. Miller that she was  
15 saying, Ms. Everett was saying, that Ms. Miller  
16 had an affair with her husband, and Ms. Miller  
17 was claiming that was not true to Mr. Hopkins?  
18 Did that pop up anywhere in your review of  
19 anything?

20           A       I did see that, and the -- so I  
21 looked at that from the standpoint of would there  
22 need to be training regarding that type of a  
23 statement or a misstatement if it was a -- or an  
24 untruth if it were untrue. And there is no  
25 justification for an affair to be able to commit

1 the crime of harassing communication.

2 So it really isn't relevant to  
3 whether or not there's a violation of the statute  
4 of harassing communications as to whether there  
5 was an affair because the justification statute  
6 for Georgia doesn't include that. So  
7 justifications could be self-defense, government  
8 official, like a police officer or a deputy  
9 carrying out the duties of their office, etc.

10 But there isn't one for this  
11 circumstance, so I didn't deem it as relevant as  
12 to whether or not there was probable cause for  
13 that -- that particular charge or relevant to  
14 whether there needs to be training related to  
15 that because the detective stated it correctly.

16 I believe it was in one of the  
17 supplemental reports maybe, or maybe it was in  
18 the letter. I just don't recall. But I read it  
19 where he said one party was claiming that there  
20 was an affair; the other party was denying it.

21 But that in the context of the  
22 statute or harassing communications, it wasn't  
23 relevant as to whether or not one person is  
24 attempting to harass, molest, or threaten another  
25 person. So I hope that answers your question in

1 a big, circular way. I apologize.

2 Q So the officers are taught to put  
3 material things in their warrants; is that  
4 correct?

5 A Or disclose them to the judge, yes.

6 Q Okay. And if -- do you realize or  
7 recognize that the topics of those emails was all  
8 about an allegation about an affair and that's  
9 what Ms. Everett was ticked about? Is that  
10 right?

11 A That's what it appears to be, yes,  
12 sir.

13 Q Okay. So if you take that -- if  
14 that's not relevant, whether there's an affair or  
15 not, then the other things are just words and  
16 don't have any connection or meaning, right, like  
17 slut, cunt, whore; right?

18 A I disagree that they don't have  
19 meaning.

20 Q Okay. All right. So what was it  
21 if -- you're saying that the fact about the  
22 affair, that had nothing to do with the totality  
23 of the circumstances?

24 A I'm saying that the context or  
25 content of the email is what was harassing



1 regardless of the reason for Ms. Everett sending  
2 the email. I -- you know, a person would  
3 naturally be upset regarding an affair, but it  
4 doesn't give them the ability to commit the crime  
5 of harassing communications.

6 Q All right. But the statute protects  
7 constitutionally protected speech; right?

8 MR. SNELLING: Object to the form.

9 A It does in the Code section, yes.

10 Q Yeah. Okay. Do you know that  
11 harassing speech can be protected under certain  
12 circumstances?

13 A Under certain circumstances.

14 Q Okay. And was there any chance that  
15 Ms. Everett was going to hit Ms. Miller --

16 MR. SNELLING: Object.

17 Q -- when Ms. Miller's opening up those  
18 emails?

19 MR. SNELLING: Object to the form.

20 A At the time she opened up the email,  
21 as one was in Alabama and one was in Georgia, no.  
22 But there was an email in there that said she  
23 wanted to see her cry and that she would or may  
24 come to Harrison High School. So that would --  
25 that would give an indication that there may be a

1 face-to-face confrontation.

2 Q And that's enough reason and probable  
3 cause to arrest someone, that there may be a  
4 confrontation?

5 A I'm saying that the totality of the  
6 circumstances.

7 Q Okay. All right. In your review of  
8 the file, did you notice that apparently  
9 Ms. Miller had withheld or made a false statement  
10 to Mr. Hopkins about the affair? Did you notice  
11 that?

12 A I didn't notice that it was ever  
13 established conclusively.

14 Q Do you know whether Hopkins ever  
15 cleared that up in his mind?

16 A I don't know. I never asked him. I  
17 never spoke to him about it.

18 Q Okay. If a phone call lasts for,  
19 say, 36 minutes, would you consider that to be a  
20 consensual phone call if neither party told the  
21 other party to hang up?

22 A Depending what's being said on the  
23 phone call.

24 Q Well, one person can always hang up;  
25 right?

1           A           One person can hang up unless there's  
2 reasons given to not hang up. I mean, that was a  
3 very broad-based, hypothetical situation.

4           Q           Okay. All right. Did you give  
5 officers training, you know, between July 1,  
6 2015, to August 2015, did you -- is there any  
7 training with Cobb County to tell citizens, if  
8 they don't like the emails that are coming in,  
9 don't open them or put them on spam?

10          A           Are you asking if we gave training to  
11 the citizens on that?

12          Q           No, to officers to tell the citizens  
13 that.

14          A           No. But that, again, falls under  
15 officers tell people all the time, you know,  
16 ignore them. If somebody comes to their door to  
17 fight them, don't answer your door. Call us  
18 instead, things like that.

19                    But in this, I believe there was some  
20 fake email account made to try to slide past spam  
21 filters is what 24 years' experience reading  
22 it -- if an email was sent to me and it had my  
23 name on it as the sender, that would certainly  
24 spark my curiosity as to who has the same name as  
25 me that's sending me an email. So then I would

1 be very likely to open it, so.

2 Q So when you open up an email,  
3 generally you're not captive to the person who's  
4 sending the email, are you?

5 A You're not, but you are captive of  
6 whatever emotion it conjures up depending on the  
7 totality of the circumstance.

8 Q So --

9 A I've certainly read email over my  
10 years that has made me mad and has made me mad  
11 for an extended period of time.

12 Q Okay. And does that go into the  
13 training of what Hopkins might have been trained  
14 as to what emails he can take all the way to  
15 having somebody arrested for?

16 A I think where it goes is it goes back  
17 to the training on being reasonable under the  
18 Fourth Amendment, and it goes back to applying  
19 common sense, that when you look at a  
20 situation -- when a person comes in and he makes  
21 a report that they're being harassed and an  
22 officer views that, they view it as, you know,  
23 would a -- how would a reasonable person in this  
24 same situation see it.

25 So that's the type of training they

1 get is officers have to be reasonable in their  
2 conduct, and you view these things from that  
3 perspective.

4 And so being called a bunch of  
5 names -- if a random stranger started emailing a  
6 particular individual and calling that individual  
7 the names that were called in these emails and  
8 there was no connection between them, it would  
9 very likely constitute harassing communications  
10 if it persisted and persisted.

11 Q Where does the officer look to see if  
12 something's persisting? How does an officer make  
13 that determination, and how do you train the  
14 officers to make that determination?

15 A We look at the totality of the  
16 circumstance. In this case --

17 Q No. How do you train it?

18 A How do we train it?

19 Q Yeah, how do you train it?

20 A Oh, we tell people to be reasonable,  
21 and you know what persisting is. It's a  
22 matter -- it's an application of common sense.  
23 Persisting is you look at the amount of time, and  
24 you look at the frequency, and you balance that  
25 with what's being said. And if it's statements

1 that are intended to harass, annoy, or threaten  
2 or intimidate, and you apply common sense to  
3 that.

4 There's no specific training as to  
5 this amount of days and this amount of emails  
6 operates to be considered persisting.

7 Q Do you train as a matter of common  
8 sense that the person sending the emails should  
9 have been warned, stop this, I don't want this  
10 anymore, before it crosses a line?

11 A Well, as a matter common sense  
12 looking at this case --

13 Q No. Do you train it?

14 A We train as a matter common sense and  
15 as being reasonable. And looking at this case,  
16 the officer could tell that Ms. Everett knew she  
17 didn't want to be contacted. She stated it in an  
18 email.

19 Q All right. Let me ask you the  
20 question and see if you can answer it directly.

21 Do you train that when you're  
22 teaching someone about when to arrest, about  
23 persistent communications, that one of the  
24 factors they should look at is whether the  
25 receiver has told the sender, stop, I don't want

1 these communications anymore? Do you train that?

2 Yes or no?

3 A We train does the person know or  
4 likely to know that the person that they're  
5 contacting doesn't want to be contacted.

6 Q And how do you -- do you train them  
7 to ask the question: Have you told them to stop?

8 A Not specifically in those exact  
9 terms, no.

10 Q Well, what terms do you tell them to  
11 look at that issue?

12 A To establish the elements of the  
13 crime.

14 Q To establish that it's not wanted  
15 communications?

16 A We train them to establish the  
17 elements of the crime.

18 Q You don't give them any training  
19 about what to look at as to whether the  
20 communication is accepted, wanted, continued, who  
21 knows?

22 A That's part of establishing the  
23 elements of the crime, and Detective Hopkins did  
24 so in this case based on the content of the  
25 emails that were sent by Ms. Everett.

1           Q       Yeah. So how do you know Ms. Miller  
2       wasn't just entrapping Ms. Everett if those are  
3       the standards you use?

4                   MR. SNELLING: Object to the form.

5           A       In that situation, there would have  
6       been potentially with the courtesy warning letter  
7       that was sent an opportunity for Ms. Everett to  
8       say, whoa, I haven't been sending these emails,  
9       whatever you're talking about. I don't even know  
10      what you're talking about.

11                   That could have been said. She could  
12      have called. So there was that opportunity  
13      there.

14          Q       Did you ever check and see whether  
15      Hopkins really made the phone calls to the  
16      Everetts he claims he made?

17          A       I reviewed the incident report so  
18      that I had context and could review it from a  
19      training perspective.

20          Q       So did you ever review the emails in  
21      this case?

22          A       I did.

23          Q       Okay. Did you find whether they were  
24      covered by the Constitution or not, protected by  
25      the Constitution?



1           A       In my --

2           Q       Each one, one at a time?

3                   MR. SNELLING: Object to the form.

4           A       The Constitution doesn't require you  
5       to view each individual thing in isolation. The  
6       Constitution is the whole standard of  
7       reasonableness under the Fourth Amendment. It  
8       looks at totality of the circumstance, and  
9       officers are trained that repeatedly.

10          Q       Do you believe that the Constitution  
11       says that emails are pure speech?

12          A       Repeat that question, please.

13          Q       Do you believe that the Constitution  
14       would say that emails are pure speech.

15          A       I don't know what you mean by "pure."

16          Q       All right. Thank you. Okay. Let's  
17       see. Do you believe that a book is pure speech?

18                   MR. SNELLING: Object to the form.

19          A       I believe books and email are speech.  
20       I don't know why you're using the term pure in  
21       there, but.

22          Q       Okay. How about a newspaper?

23          A       That is speech.

24          Q       Okay. And an email's speech? Same  
25       level of protection?

1           A           The press is given additional  
2           protection.

3           Q           Do you know what public fora speaking  
4           is?

5           A           I do.

6           Q           Okay. And is speech in a public fora  
7           protected even though it's from a private person?

8           A           Sometimes, not every time.

9           Q           Okay. And did you always -- is it  
10          good, clear training to everybody as of August  
11          2015, if they have a question about whether  
12          speech is protected, they're supposed to ask  
13          somebody?

14          A           That's always the case. All of our  
15          officers know that if they have a question on any  
16          application of their job that they can contact  
17          their supervisor. Or if it's legal related, they  
18          can contact me. Or they can contact their  
19          supervisor, and their supervisor will contact me.

20                   Or they can contact the on-call  
21          solicitor, or they can contact an on-call ADA if  
22          they need to. So there's plenty of people that  
23          can be contacted if need be.

24          Q           So if an officer's clear that there's  
25          been a violation of a law, they would just go

1 ahead and take out a warrant; right?

2 A Correct.

3 Q Okay. But a method to resort to when  
4 they're unclear about whether there might be a  
5 violation of the law, they send a cease and  
6 desist letter; right?

7 MR. SNELLING: Object to the form.

8 A Well, I can't speak to what the  
9 detective's mindset was, but I can speak to what  
10 my belief was upon reading the email, and that  
11 was that he had already established probable  
12 cause. And that was just a courtesy warning, a  
13 way to handle the situation that was amenable to  
14 both and would be the least invasive way to  
15 handle the situation.

16 So as for unsure, I wasn't unsure  
17 upon reading it, and you'll have to ask the  
18 detective whether or not he was unsure.

19 Q And the officer also was putting in  
20 the arrest warrant and in the cease and desist  
21 letter information about the affair; right?

22 A I don't believe I saw it in the  
23 arrest warrant, and I would have to read the  
24 cease and desist letter again.

25 Q All right. We'll show you what we

1 previously marked as Defendants' 6 from a prior  
2 deposition.

3 A This is the same --

4 Q Same thing.

5 A Okay. Okay. The arrest warrant  
6 says, "emails to the victim claiming the victim  
7 had engaged in an extramarital affair with the  
8 accused's husband."

9 Q So the officer found that was  
10 material when he wrote his warrant; right?

11 A It appears to be.

12 Q Okay. And the officer put something  
13 about that -- did he put that in the cease and  
14 desist?

15 A Could you show me --

16 Q Sure.

17 A -- the cease and desist? And I'll  
18 give you a definitive answer. Thank you.

19 Yes, sir. I see it in the first  
20 paragraph.

21 Q All right. And were you aware that  
22 when Officer Hopkins called up Mr. Everett, when  
23 they finally spoke and the arrest warrant had  
24 already been issued, that the first question out  
25 of Mr. Hopkins' mouth was, well, tell me about

1 the affair. Did it happen or not? Are you aware  
2 of that conversation?

3 A Not specifically.

4 Q Okay. And were you aware that  
5 Mr. Hopkins was told that the affair did happen?  
6 He said, too late, let that warrant go through.  
7 Are you aware about that?

8 A Not specifically. However, it still  
9 doesn't change the nature of the harassing  
10 communications.

11 Q Okay.

12 A It's not exculpatory. It doesn't  
13 negate probable cause. It would clearly be  
14 upsetting for someone. I totally understand  
15 that. But it's not justification.

16 Q Do you know what prior restraint is?

17 A Not in the context that I bet you're  
18 asking me.

19 Q Well, tell me if you are able to  
20 relate prior restraint to these cease and desist  
21 letters.

22 A I'm not.

23 MR. BATSON: Okay.

24 MR. SNELLING: If you don't  
25 understand his context, you can ask him to

1 explain.

2 THE WITNESS: I don't understand his  
3 context.

4 Q All right. Do you understand -- tell  
5 me what your understanding of prior restraint is.

6 A I don't -- I don't understand what  
7 you're talking about.

8 Q Tell me your understanding of prior  
9 restraint. You're a trainer. Do you teach prior  
10 restraint?

11 A Not in those terms. You'll have to  
12 tell me what you're talking about, and then I'll  
13 be able to tell you if we have some different  
14 term for it.

15 Q Unfortunately, you just have to  
16 answer my questions.

17 Do you teach prior -- what prior  
18 restraint is to the officers of Cobb County, or  
19 did you when you were a trainer?

20 MR. SNELLING: Object to the form.

21 A I'm not -- I do not understand the  
22 context of the question.

23 Q Do you understand what you taught  
24 when you were a trainer in Cobb County?

25 A I do --

1 Q Did you --

2 A But I also understand that we may  
3 train exactly what you're talking about under a  
4 different name, so I can't answer that question  
5 not understanding what you're asking.

6 Q What's your understanding -- what is  
7 your understanding through all your training  
8 you've had -- you're a lawyer. What is your  
9 training and understanding of what prior  
10 restraint relates to?

11 MR. SNELLING: Object to the form. I  
12 think the witness has responded to your question.  
13 If you want to explain to him your context of  
14 what you're talking about --

15 MR. BATSON: No. I'm entitled to ask  
16 questions --

17 MR. SNELLING: All right.

18 MR. BATSON: -- and get some  
19 cross-examination on what --

20 MR. SNELLING: And he's entitled to  
21 say he doesn't understand.

22 Q You don't know what prior restraint  
23 is?

24 MR. SNELLING: In the context that  
25 you're asking.

1           A       Not in the context that you're  
2 asking.

3           Q       No. I did not ask in the context.  
4 I'm asking you, in general, as a lawyer, what's  
5 your understanding of prior restraint?

6           A       I don't know. I don't understand the  
7 question in the context of police work.

8           Q       Do you know that a cease and desist  
9 is usually something issued by a judge and it's a  
10 civil issue? Is that correct?

11          A       That's correct. This is a courtesy  
12 warning letter. He used the term cease and  
13 desist. He could have very easily said, please  
14 stop so that I don't have to arrest you. He  
15 could have easily said that too.

16          Q       All right.

17          A       He used the term cease and desist to  
18 sound official, but the point is it wasn't a  
19 court order. It wasn't an official from-a-judge  
20 order to cease and desist. It was not an  
21 injunction. It was not a restraining order. It  
22 was a courtesy warning, and any language  
23 whatsoever that conveyed the, please stop doing  
24 this so I don't have to take out a warrant on  
25 you, would have been sufficient.



1           Q       All right. Did that letter also have  
2       a condition in it that all communications had to  
3       stop by a certain time?

4           A       It did, but it didn't need to.

5           Q       That's -- isn't the person receiving  
6       the letter entitled to rely on what's stated in  
7       the letter from this official?

8           A       There could have been a contact for  
9       clarification on that, but it wasn't --  
10      certainly, it wasn't a letter saying, between now  
11      and when you think the correct time is, say  
12      anything you want. The whole point was to cease  
13      the harassment, the harassing communications.

14          Q       And if the last communication didn't  
15      independently violate the law, then there was no  
16      reason to arrest; isn't that right?

17                   MR. SNELLING: Object to the form.

18          A       Totally incorrect in my opinion.

19          Q       Why is that?

20          A       Because the crime had already  
21      occurred. Based on the totality of the  
22      circumstances, everything taken together, in  
23      other words, probable cause existed. So that was  
24      prior to the sending of the letter.

25                   So just because he gave somebody a

1     courtesy warning and then decided to not do the  
2     courtesy warning -- because the person proved  
3     that it wasn't going to stop them from having  
4     contact with the other party and that the matter  
5     would continue and continue. And so he elected  
6     to obtain a warrant based on facts and crimes  
7     that had already occurred. It's irrelevant, the  
8     time on there. It's irrelevant what that last  
9     contact was.

10         Q       Okay. And the totality of the  
11     circumstance is the fact that the alleged victim  
12     never told the alleged perpetrator to stop. That  
13     didn't matter. And the fact that the affair was  
14     the whole topic of the thing, that didn't matter?  
15     It just was the words. It was just the words  
16     that were used out of the context of what was  
17     trying to be said?

18                 MR. SNELLING: Object to the form.

19         A       There was an offer of a phone call  
20     that was never taken up, apparently. From  
21     reading the report, there was no mention that  
22     there was ever that phone call made, and --

23         Q       But there's a conditional time line  
24     that says, if you send any more communications  
25     after a certain time, you're going to get

1 arrested. I'm going to take out a warrant --

2 A I was talking about --

3 Q I'm going to get you arrested.

4 A I'm sorry. I was talking about  
5 Ms. Everett sending an email with her phone  
6 number to Lani Miller to discuss the matter. And  
7 there was not a phone call made to discuss the  
8 matter.

9 Q Oh, by Ms. Miller?

10 A Correct.

11 Q And there was not a --

12 A And then there was a subsequent  
13 email, I believe from Ms. Everett, that ended  
14 with, I guess Lani doesn't want to be contacted.  
15 And then it called her a derogatory term, the  
16 C-word or something like that. So it's -- there  
17 seemed to be, what a reasonable officer could  
18 infer with some clarity, knowledge on the part of  
19 Ms. Everett that Ms. Miller didn't want to be  
20 contacted.

21 Q Okay. Do you know whether  
22 Ms. Everett had been told that directly by  
23 Ms. Miller? No, she had not.

24 A I did not know that.

25 Q Yeah. So you let the police step in

1 and operate on behalf of one private party to try  
2 and end a dispute about whether there was an  
3 affair or not?

4 MR. SNELLING: Object to the form.  
5 Is this about training or the 30(b)(6)?

6 A No, sir.

7 Q Okay. Is that your -- is that kind  
8 of the bottom line in what you're saying here?

9 MR. BATSON: No. It isn't about  
10 training. No, it isn't.

11 MR. SNELLING: Is this beyond a  
12 30(b)(6)?

13 MR. BATSON: Oh, absolutely, it is.

14 MR. SNELLING: Okay. I just want to  
15 make clear.

16 Q Yeah. Okay. So do you know whether  
17 the department now is training that emails are  
18 pure speech and that the content of the email is  
19 protected unless it's obscenity?

20 A I don't believe that that is an  
21 accurate statement of the law. So, no, we're not  
22 training that.

23 Q What would you say the accurate  
24 statement of the law is?

25 A The accurate statement of the law

1 would be email that's sent that's not intended to  
2 harass, molest, threaten, or intimidate could be  
3 considered protected speech, or the converse of  
4 that would be the correct state of law. I know  
5 of no case law from the 11th Circuit or the  
6 Supreme Court that would invalidate our current  
7 harassing communication statute.

8 Q All right. So --

9 A But if there is some, we would train  
10 on it.

11 Q So you know that unwanted speech can  
12 be protected speech; right?

13 A Some can, yes.

14 Q So how do you train between the  
15 difference between unwanted speech and harassing  
16 speech?

17 A It's common sense.

18 Q Okay. Just based on the speech?  
19 Nothing to do with any other --

20 A No, based on the totality of the  
21 circumstances.

22 MR. BATSON: Okay. All right. Let's  
23 take a break, but it shouldn't be long.

24 MR. SNELLING: Yes, sir.

25 - - -

1 (Proceedings in recess, 12:28 p.m. to  
2 12:41 p.m.)

3 Q So did -- when you were the trainer,  
4 did you train on the fact that officers can't do  
5 things to chill protected speech?

6 A Yes, in the context of seizing video,  
7 when people video the actions of the police,  
8 things like that, and that was part of the topic  
9 of discussion.

10 Q Okay. How did you train officers to  
11 handle a situation when somebody was videoing the  
12 police?

13 A We trained them to -- that the person  
14 had a right to videotape the actions of police  
15 and that if a supervisor -- an example was given  
16 along the lines of if it was a use-of-force-type  
17 incident and the person videoed it, that a  
18 supervisor could go to them and ask nicely for  
19 consent to view it to help us in our  
20 investigation of a particular use of force.

21 But we couldn't take their phone away  
22 from them and that we could not force them to  
23 show us the video. We could ask them to email us  
24 the video. We could ask them to show us the  
25 video. But that other than that, there isn't a

1 lot we can do.

2 Q All right. What did you do -- what  
3 was your training in 2015 about whether officers  
4 could tell or give a warning saying, stop that  
5 video? What would you tell the officers about  
6 that?

7 A Well, that training that I'm telling  
8 you about, I think it was in 2012 or 2013. And  
9 we told them that they could not tell people that  
10 they could not video.

11 Q Okay.

12 A So that's it.

13 Q So what if they give them a warning,  
14 I'm warning you, I want you to stop videoing. Is  
15 that the same -- what you're telling me, you  
16 can't even tell them, if you don't stop videoing,  
17 I'm going to arrest you?

18 A Correct. It's not good in a  
19 situation like that to tell somebody to not video  
20 because you can't back that up by forcing them to  
21 stop videoing. So you can ask somebody to do  
22 anything you want as a matter of consent. But as  
23 for telling them not to video, you can't -- you  
24 shouldn't bother doing that because you can't  
25 back it up.

1                   Whereas in this situation, the  
2                   officer could tell Ms. Everett not to video -- or  
3                   I'm sorry, correction -- not to send any more  
4                   emails because he could take action in that  
5                   situation based on what had happened previously.

6                   Q           All right. The fact that Ms. Everett  
7                   was in Alabama, could a judge from Georgia have  
8                   ordered her to not send any more emails?

9                   A           Unlikely, but a judge from Georgia  
10                  could certainly issue a warrant for the crime of  
11                  harassing communications based on the venue  
12                  statute.

13                  Q           Where would the actus reus be on  
14                  behalf of Ms. Everett? Where would she be  
15                  performing anything that was in violation of the  
16                  law?

17                  A           The venue statute covers that when it  
18                  says that the crime can be considered as  
19                  committed for venue purposes where the email was  
20                  sent from or where the email was received.

21                  Q           Isn't there a presumption that the  
22                  sender under those circumstances is, in fact,  
23                  within the jurisdiction of Georgia? Isn't that  
24                  the presumption or the interpretation of the  
25                  statute?



1           A           I believe no because even the  
2           jurisdiction law for Georgia talks about crimes  
3           that are committed in two states can be  
4           considered or handled in Georgia as long as part  
5           of it is committed in Georgia.

6                        So in this situation, part of it,  
7           which would be the receiving of the email, would  
8           be committed in Georgia in the county where the  
9           email was received.

10          Q           So you're saying the effect of  
11          reading the email establishes jurisdiction -- the  
12          effect of reading the email in Georgia  
13          establishes jurisdiction over a sender in another  
14          state?

15          A           A plain reading of the statute would  
16          indicate that to a police officer. So if there  
17          is a constitutional challenge to that or a state  
18          challenge to that and it's determined not to be,  
19          then training would be given in that area.

20                       But as of right now, that I'm aware  
21          of, there is none. And so a reasonable officer  
22          in that same situation would believe that he was  
23          good in charging where the email was received.

24          Q           Wouldn't the question be what prior  
25          case law would be imposed or superimposed on the

1 statute to begin with?

2 A Well, if that were the case, then one  
3 would believe that the statute wouldn't have been  
4 enacted had there been prior case law that  
5 prohibited a statute such as that. That's why  
6 there's judicial committees at the legislature to  
7 ensure that that's not the case.

8 But beyond that, certainly a police  
9 officer is not required to conduct copious  
10 amounts of legal research prior to enforcing a  
11 statute. They can rely on the statute.

12 Q Does the legislature and -- don't  
13 officers and the legislature presume that  
14 statutes legislated in Georgia only legislate to  
15 Georgia violations of the law?

16 MR. SNELLING: Object to the form.

17 A Georgia's venue statute that's been  
18 around for ages says that crimes committed in  
19 whole or in part in the state can be prosecuted  
20 in the state. So in a situation where an email's  
21 sent from one state into the state of Georgia,  
22 where it's opened in Cobb County, for example,  
23 that would be committed in part in the state of  
24 Georgia.

25 Q If the email does what?

1           A           Harasses, annoys -- it's harasses,  
2           molests, or threatens, I believe.

3           Q           So any of these repeated emails that  
4           I get that are harassing me, I can come to Cobb  
5           County and have you guys start arresting these  
6           various businesses that are sending harassing  
7           emails to me? Is that your deal?

8                       MR. SNELLING: Object to the form.

9           A           I don't know what email -- if you're  
10          in Cobb and you get a harassing email, you can  
11          make a report, and we'll look at it.

12                      MR. SNELLING: We'll let him get  
13          legal counsel on that.

14                      MR. BATSON: We'll do that after  
15          lunch. I don't think we have anything else.

16                      MR. SNELLING: We'll read and sign.

17                      (Proceedings adjourned, 12:49 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

Brian S. Batterton

Everett vs Cobb County, Georgia, et al.

November 14, 2018

1 I, BRIAN S. BATTERTON, Deponent,  
 2 do hereby certify that I have read the foregoing  
 3 deposition, and the same is a true and accurate  
 4 transcript of my testimony, except for the  
 5 changes listed below, if any.

6 PAGE/LINE/CHANGE REASON

7 \_\_\_\_\_  
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20 If additional space is needed, please attach  
 21 separate sheet(s) and indicate number of  
 22 additional page(s) here: \_\_\_\_\_

23 \_\_\_\_\_  
 24 BRIAN S. BATTERTON, Deponent  
 25 Donovan Reporting, P.C. FAX: 770-428-5801  
 237 Roswell Street, Marietta, GA 30060  
 Date of Deposition: 11-14-2018 CR: NS

## 1 CERTIFICATE OF COURT REPORTER

2 STATE OF GEORGIA

3 COUNTY OF COBB

4 I hereby certify that the foregoing  
5 deposition was reported as stated in the caption,  
6 and the questions and answers thereto were  
7 reduced to writing by me;

8 That the witness's right to read and  
9 sign the deposition was reserved;

10 That the foregoing pages 1 through 69  
11 represent a true, correct, and complete  
12 transcript of the evidence given on the  
13 above-referenced date by the witness,  
14 BRIAN S. BATTERTON, who was first duly sworn by  
15 me;

16 That I am not of kin or counsel to  
17 any of the attorneys or parties in this case.

18 I do hereby disclose pursuant to  
19 Article 10.B. of the Rules and Regulations of the  
20 Board of Court Reporting of the Judicial Council  
21 of Georgia that I am a Georgia Certified Court  
22 Reporter; that I am an employee of Donovan  
23 Reporting PC; that Donovan Reporting PC was  
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25 to provide court reporting services for this

1 deposition; that I am not taking this deposition  
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3 15-14-37 (a) and (b) or Article 7.C. of the Rules  
4 and Regulations of the Board; and I am not  
5 disqualified for a relationship of interest under  
6 OCGA 9-11-28(c).

7           There is no contract to provide  
8 reporting services between myself or any person  
9 with whom I have a principal and agency  
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11 action, party to this action, party having a  
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13 an attorney at law in this action, party to this  
14 action, or party having a financial interest in  
15 this action. Any and all financial arrangements  
16 beyond my usual and customary rates have been  
17 disclosed and offered to all parties.

18           This 29th day of November, 2018.

19

20

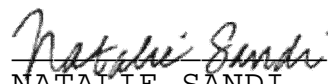
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NATALIE SANDI, CCR  
5677-0274-4622-6944  
Certified Court Reporter

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